IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 320 OF 2005

In

WRIT PETITION NO. 1030 of 2004

M/s.Vinsons .. Petitioner

versus

Bhimrao D. Kamble & Anr. .. Respondents

...

Mr.K.P. Anilkumar for the petitioner

Mr.Mohan Bir Singh with B.G. Tangsali for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 20th July 2005.

P.C.:

1. Heard learned counsel for the parties.

2. By an order dated 4th September 2003 passed by Central Government, Industrial Tribunal No.2, the Tribunal ordered reinstatement of the applicant herein (respondent in the Writ Petition) be reinstated in service by the petitioner.

3. By an order dated 19th April 2004, a Writ Petition directed against the petitioner was admitted and interim stay for execution of the award was granted. Thereafter, the applicant has made this application u/s.17B of the Industrial Disputes Act (for short 'the Act') for payment of the wages. No affidavit in reply has been filed by the petitioner. The only contention raised by the learned counsel for the petitioner is that the petitioner industry has been closed down and therefore, an application u/s.17B of the Act is not maintainable.

4. Relying upon the decision of the Division Bench of the Kerala High Court in K. Bhaskaran Vs. R. Janardhanan Pillai reported in 1989 I LLJ 484, learned counsel for the applicant contends that the fact that the industry has been closed down is not relevant for the purpose of passing an order u/s.17B. After quoting section 17B in paragraph no.3 of the decision, the Division Bench has observed.

> "Three conditions have to be satisfied for invoking section 17-B of the Act. They are:
>
> (1) There should be an award by the Labour Court or the Tribunal directing reinstatement of the workmen.

(2) The award should have been challenged in a proceeding pending in the High Court or the Supreme Court.

and

(3) The workman should not have been gainfully employed in any establishment during the pendency of the said proceedings.

No other condition is required to be satisfied for attracting liability under Section 17-b. Therefore, the question as to whether the industry is in operation or has been closed down is not relevant for the purpose of Section 17-B of the Act.

No other contrary decision is cited by learned counsel for the petitioner. Hence, motion is allowed as follows :-

5. Petitioner shall pay to the respondents wages @ Rs.4579.08 p.m.(salary mentioned by the applicant in his affidavit in view of the examination in chief before the Tribunal) from the date of admission of the Writ Petition i.e. from 19th April 2004 upto date. Arrears shall be paid within a period of eight weeks. Monthly payment shall be made on or before 10th day of every succeeding month.

D.G. KARNIK, J